CASE SUMMARY

Complaint against the Transport Department and the Administrative Office of a Magistracy of the Judiciary

THE COMPLAINT

The complainant lodged a complaint against -

(a) the Transport Department (TD) for unreasonably requiring him to pay the fines imposed in order that his driving licence could be renewed in time; and

(b) the administrative office of a Magistracy of the Judiciary for bureaucracy.

2. On 10 April 1996, the complainant went to a Licensing Office (LO) of the TD for renewal of his driving licence. The counter staff advised him that there was an outstanding fixed penalty charges being recorded against him. Unless the charges were settled, the TD was not prepared to renew his driving licence. The complainant told the staff that he was not held responsible for the said charges as the court order was set aside by a presiding Magistrate at a review hearing on 25 January 1995 and a re-trial was yet to be heard on 7 May 1996. He further explained the circumstances to the Officer-in-charge of the LO but to no avail.

3. In order not to cause delay to the renewal of his driving licence, he reluctantly agreed to bringing with him a memo produced by the TD and approached the relevant Magistracy with a view to paying the penalties thereat. However, the Magistracy staff told him that he was not required to pay for the charges. To avoid the trouble of travelling back to the LO with fruitless result, he requested the officer to give him some documentary proof to show that his liability to the charges had been relieved. Surprisingly, his request was not entertained but instead the officer collected the fines and issued him

with an official receipt. Now that the charges had been settled and he had his driving licence renewed by the TD.

4. It should be noted that in the course of processing this case, the complainant had written to this Office signifying his intention to withdraw the complaint. Having considered the substance of the complaint and in view of the prima facie evidence of maladministration, The Ombudsman invoked Section 11 of The Ombudsman Ordinance to continue with the investigation.

OBSERVATIONS AND CONCLUSION

Complaint against the Transport Department

5. Upon investigation, this Office noted that two computer systems were involved in this complaint case, viz. (a) the TD's VALID III (Vehicle and Driver Licensing Integrated Data System) for maintaining the records and the issuance of vehicle and driving licences and it also provides a fixed penalty sub-system for the Police to process fixed penalty tickets; and (b) the CASEMAN (Case and Summons Management System) hosted by the Judiciary for management of charge and summons cases within Magistracies and for prosecuting departments to lay information for summons through the system. The old CASEMAN system was designed in 1989 and did not have a function for electronically transmitting hearing results of review proceedings of fixed penalty summons to the VALID III system. In the circumstances, the records of the VALID III system would have to be updated by the Police manually. On 19 August 1997, the old CASEMAN system was replaced by a new CASEMAN system in which the said function is now added.

6. In this case, when the complainant pleaded not guilty of the traffic offence, the information in the old CASEMAN system was not fed to the VALID III system automatically. Unfortunately, no manual updating of computer records was done by the Police. As such, the record of the court case in the VALID III system as shown in the TD's LO remained unchanged. Under Section 10(1) of the Fixed Penalty

(Criminal Proceedings) Ordinance, the TD had to refuse to renew the complainant's driving licence. In respect of the Police's inaction on the matter, this Office has no authority to act on it as the Police is outside this Office's jurisdiction.

7. This Office notes that the TD had a practice of making direct telephone enquiries with the relevant Magistracy for clarification in case of doubt. But in handling this case, the TD took no such action.

8. The TD argued that when the complainant raised the point that he had applied for a re-trial hearing, the LO did request the complainant to produce the relevant court paper to enable the LO to cross-check with the relevant Magistrate staff on the most up-to-date position. As no such document was produced by the complainant, the TD was not empowered to temporarily uplift the restriction imposed by the VALID III system. However, as a matter of fact, the complainant was not liable to pay the fines so imposed at the time when he applied to the LO for renewal of his driving licence. Should the LO have made direct telephone enquiries with the Magistrate staff, the LO could have renewed the complainant's licence right away. The Ombudsman therefore concludes that the complaint against the TD is partially substantiated.

Complaint against the Administrative Office of a Magistracy of the Judiciary

9. The crucial point in this complaint is whether the Magistracy had declined the complainant's request for provision of documentary proof to facilitate his application for renewal of driving licence but collected the fines instead. Upon investigation, this Office notes from the statements provided by all officers serving the relevant Magistracy in April 1996 that they all claimed to have no knowledge of the incident.

10. In this connection, the complainant had supplied this Office with a copy of his letter dated 10 December 1997 seeking proof from the Magistracy that he was not required to pay the fines upon his arrival at the Magistracy on 10 April 1996. This letter was the only evidence available showing that the complainant had approached the

Magistracy for assistance and clarification. Given the fact that the old CASEMAN system had been replaced by the new CASEMAN system on 19 August 1997, and that the complainant's case as recorded in the computer on 10 April 1996 could no longer be retrievable, the Magistracy was therefore unable to entertain the complainant's request. The Judiciary further advised that, even if such record was available at the material time, the only certification that could be provided to the complainant would be that the court case was rescinded.

11. In view of the discrepancy found and in the absence of an independent witness, there was insufficient evidence to substantiate the allegation that the officer of the Magistracy had been bureaucratic in handling the complainant's request. Hence, The Ombudsman concludes that the complaint against the Administrative Office of a Magistracy of the Judiciary is unsubstantiated.

12. All points considered, The Ombudsman concluded that this complaint is **partially substantiated**.

LATEST DEVELOPMENT

13. This Office is pleased to note that the TD has since taken the initiative to liaise with the Police with a view to improving the inter-departmental co-ordination. In order to minimise any undue inconvenience to applicants, a formal contact point in the Police has now been established for the TD to obtain the latest information on outstanding court cases and to clarify ambiguities relating to payments of fixed penalty tickets. Additionally, the TD's licensing staff have been fully briefed of the need to observe any order made by the Magistrate when processing applications for renewal of licences. The supervising officers of the TD's LO will also make direct enquiries with the relevant Magistrate staff in case of doubt.

RESPONSE FROM THE TRANSPORT DEPARTMENT

14. The TD opined that the observations by this Office that "Should the LO have made direct telephone enquiries with the Magistrate staff, the LO could have renewed the complainant's licence right away" had over-simplified the process in handling the case and it should be qualified by saying "Should the complainant be able to produce the relevant court papers". If the applicant cannot produce the relevant court papers, it could take a longer time to follow-up the case as several telephone calls would normally be required before the right contact with the relevant Magistracy could be established. In considering whether the complaint should be partially substantiated, the TD pointed out that consideration should be given to the circumstances confronting its officers in the LO, the absence of documentary evidence from the complainant and the actions of the related parties.

RESPONSE FROM THE JUDICIARY

15. The Judiciary had no comments to make on this Investigation.

FINAL REMARKS

16. The partial substantiation of the complaint against the TD was judged on the lack of the TD's action in seeking clarification on the complainant's case with the relevant Magistracy by telephone. Besides, the TD's LO had at the material time provided the complainant with a memo bearing the court case number for his payment of fines at the appropriate Magistracy as indicated by the court case number before his licence could be renewed. As indicated in the memo, the first two alphabets of the court case number stood for the relevant Magistracy. This should have given the TD's LO sufficient information to establish the right contact. Hence, this Office remains to be convinced of any difficulty that the TD's staff would have encountered in following up the complainant's case even without his providing the relevant court paper. In the circumstances, The Ombudsman is therefore of the view that the conclusion of this investigation should remain unchanged.

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